

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,  
JULIA AGAZIO,  
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her individual capacity,

Defendant.

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ADVISORY RULINGS

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The liability issue to be determined at the trial to begin on July 9, 2012, is whether Officer Suzanne Barber violated the plaintiffs' property interest protected by the Fourth Amendment when she shot their family dog "Zoey" without reasonable cause to believe that she was in imminent danger from the dog's attack. At the pre-trial conference on April 20, 2012, counsel were asked to submit briefs as to whether Maria Agazio, a minor, was a proper plaintiff and as to the measure of damages. While these questions would normally be answered at trial, it will help the parties in trial preparation for the Court to advise them now of the Court's views after reviewing the authorities cited in the briefs and the anticipated evidence identified in the summary judgment proceedings.

The Fourth Amendment protects a person's possessory interest in property. While Maria Agazio's minority may preclude her from claiming ownership of the dog,

she does have a protectable interest in the possession of it. All three of the plaintiffs share such an interest in a family dog.

The deprivation of the use and benefit of personal property gives rise to a claim for damages measured by the value of the property. When, as here, there is no market value, the plaintiffs may recover the dog's intrinsic value to them. There is no clear Colorado precedent for determining damages for the loss of a family dog. The plaintiffs seek thousands of dollars for emotional distress, pain and suffering and loss of companionship. Unless the plaintiffs can prove that the defendant acted intentionally and with malice directed toward them, personally, they may not recover such damages.

The intrinsic value of the dog does not include their affection for and attachment to Zoey. Value means worth and the worth of a dog to a family may be measured by the cost of acquisition and maintenance of the animal. Those costs are analogous to the loss of investment in other types of personal property for which there is no market.

These rulings are given as a guide for trial preparation. A trial preparation conference will assist counsel and the Court in promoting trial efficiency. Accordingly, it is

ORDERED, that a trial preparation conference will be scheduled. The parties shall submit their proposed jury instructions and suggested voir dire questions three business days before the conference.

DATED: June 13<sup>th</sup>, 2012

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge